

**HUD HOUSING CERTIFICATE FUND
NEGOTIATED RULEMAKING ADVISORY COMMITTEE
JULY 19-20, 1999 MEETING SUMMARY**

MONDAY, JULY 19

Facilitator Larry Susskind welcomed the committee and briefly reviewed the agenda, and the Committee's "Progress-to-Date". He pointed out there were five main categories of issues the Committee was trying to improve, and reviewed as following:

- I. Baseline Setting and Reconciliation
- II. Allocation and renewal system
- III. Inflation and Adjustment Factors
- IV. The "R's" (Recycling, Reallocation, Rewards)
- V. Administrative Issues

Larry pointed out that the committee had reached agreements on I and II, and would have developed drafts of agreements on III and IV by the end of July 19, with July 20 set aside for finalizing thoughts on V.

INFLATION FACTORS AND WORKING GROUP SUMMARY

Facilitator Tom Fee introduced major highlights from the July 13 Working Group meeting, focusing on 3 primary recommendations for the committee:

- 1) keep the AAF as it exists in interim rule
- 2) continue collaboration with HUD to get better data and more predictive information regarding AAFs for the near future
- 3) create a formal a system of reconciliation/correction to use when there are abrupt anomalies for PHAs whose AAFs are insufficient/wrong, etc.

Nancy Lynchild, a Working Group participant, clarified that the Working Group was NOT recommending that the AAF remain exactly the same, but that the AAF should be used as a starting point for a more refined method of inflating and predicting costs. She went on to suggest a method of inflating costs that took into account the increase in ACPU from one year to the next.

E.g.	<u>1998</u>	<u>1999</u>
	\$5,000 ACPU	\$5,500 ACPU (10% change in ACPU)
	AAF – 2.0%	AAF – 3.0% or some higher amount that captures direction/trend of increased ACPU (same concept if ACPU goes down...)

Robert Dalzell reviewed the insufficiency of the current data, especially electronically available data, which prevents HUD from thoroughly analyzing numbers on predictive

characteristics. Plus, he and other HUD staff were unsure how well the past could predict the future, given the vagaries of economy, voucher/certificate merger, etc.

A committee member suggested that with improved electronic submittal of information to MTCS, quicker turnaround times and snapshots of each PHA could enhance the process of forecasting based on recent numbers. A HUD staff member responded that HUD would still probably need a 30-day processing and/or auditing period. The discussion following focused on whether PHAs could be expected to submit information immediately, and how accurate the information would be. The discussion culminated in an agreement to continue to collaborate between PHAs and HUD (especially the FMC) to make it more practical to use the most recent fiscal year's numbers to project next year's costs.

APPEALING AN AAF

Several committee members commented that the goal of the AAF was to ensure that PHAs could stay "whole", and discussed whether an insufficient AAF (or other inflation factor) should give rise to "appeal" rights (as Notice 888-204 allows), or simply the opportunity to get more money to support their program. It was pointed out that access to reserve funds would help PHAs cope with inadequate inflation factors.

Gloria Cousar commented that one characteristic that she and other HUD staff considered was that often local communities are not doing anything to control costs and/or help low-income people find housing, which means the PHA cannot meet its 10-1-97 baseline target. Although Congress/HUD was responsible for finding the money to help the baseline number of families, she wondered if some cost controls or bearing of housing costs might be borne by the local communities.

Following up on the advantages of using the most recent year-end numbers to predict costs, it was suggested that HUD create a once-annual renewal date for each PHA. That date does not have to be the first day of the fiscal year – but could happen mid-cycle for the PHAs (6 months after year-end). Or perhaps the second quarter (3 months after year-end). Gloria Cousar indicated that HUD would like to do once-annual renewals, but internal logistics may make it difficult. Once-annual renewals may impact how much money HUD needs from Congress – basically extra money to get everyone "at the gate", which Congress may balk at.

RESERVES

After a short break, facilitator David Fairman introduced the need for flexibility in the way PHAs respond to unanticipated cost fluctuations from year to year, and how a more accurate Inflation Factor was one way, but that the real question was how can PHAs be kept or made whole given that we can never know for sure what the AAF or ACPU for any given year will be? He suggested, as a possibility, quarterly accounting which takes unused funds from one PHA (an underleased or overfunded one) and

recycles them to another PHA which needs funds, possibly by increasing PHAs' reserve fund accounts with the recaptured dollars.

Gloria Cousar explained the current system of requesting reserves from Congress. Currently, HUD does request money, in addition to the basic appropriation, to cover replenishment of reserves. It's not the full 2-months for every single PHA, but it is enough to cover their estimate of how much they think reserves will be used during the year. The 2-month amount could easily be reduced to 4 weeks (which is what Price-Waterhouse Consultants originally recommended). HUD staffers believe that the 2-month reserve is necessary, and reducing it to 4 weeks would represent a serious threat to housing the baseline families.

A committee member noted that the field offices have not been kept well informed on HUD's policy on use of reserves. HUD agreed that more communication, notices, training processes, etc. are needed (and will occur after the conclusion of this Reg Neg) to instruct everybody involved on management of the reserves portion of the §8 program. Everyone seems to understand that reserves are **not** to be used to fund additional units beyond the baseline, but their problems interpreting how the baseline is determined. It was also explained that all the certificate reserves will be rolled over directly into the voucher reserve program when they are completely merged.

Turning to re-allocation, a committee member suggested "swapping" units or authority temporarily with other PHAs on an informal basis, until the original PHA could get leased up and "ask" for the units back. Another responded that the proposal might mean that the neediest areas would not get needed units – the system could become a "clique" or "old boys network", with no attention paid to the needs of PHAs.

Cheryl Wegner explained that her PHA has a formal "swapping" program with a neighboring community in her state, under the auspices of "portability". Her PHA keeps its lease rate high, and helps defer the waiting list of the neighboring town.

Finally, a committee member noted that reserve funds (whether 2 weeks or 2 months) are not there by law, and as the reserves totaled \$1 billion or more in a year, it was possible that Congress might decide to eliminate the reserve fund, or reduce it substantially. As a result, the original funding mechanism for PHAs (renewals and new increments) must be truly the primary way of achieving wholeness for PHAs. Reserve funds should be available, but not integral to getting each PHA funded, because they may not be a dependable source of funds.

The committee turned to a discussion of how much of their reserves PHAs should be able to access, and if PHAs should have equal access or if access to reserves should be associated with a "reward" to high performers.

After a lunch, Gloria Cousar suggested a method for giving PHAs more access to their reserves. She outlined a plan with limits on the amount of reserves PHAs could access.

A long discussion followed with different suggestions and refinements to proposals, finally resulting in an agreement on Draft Reserve Recommendations.

See FINAL DRAFT RECOMMENDATION ON RESERVES - *attached*.

In response to some of the proposals, it was suggested that high-performing PHAs might be rewarded by having automatic access to their reserves, while standard PHAs would have access only after review and approval by HUD. A committee member expressed the thought that a PHA might wish to invest their unused reserve dollars, as a reward for high performance. HUD responded that there might be legal prohibitions to doing that.

The committee agreed that designating a PHA as a “high performer” could be based on their performance on CMAP, and possibly other criteria. There was strong opposition to using lowering per-unit costs as any kind of a measure of high performance, since fulfilling the program goals of S.8 (such as deconcentration) would necessarily *increase* costs, though the PHA is still a high performer.

TUESDAY, JULY 20

RESERVES - Continued

As the committee discussed the final reserve recommendation language, clarifications were made for all at the table on what specific clauses or words meant. There was a longer discussion on how reserves should be replenished if there was insufficient dollars to bring every PHA to their full two-month reserve level. Although most agreed that the method of replenishment should be “fair”, few agreed on what that would mean. Some felt that PHAs with no dollars in their reserve account, for instance, should be in line to receive more replenishment than PHAs with over 50% of their reserve dollars. Another committee member commented that PHAs who “planned” to deplete their reserves by intentionally overleasing should be considered a lower priority for replenishment than PHAs who had unanticipated cost increases.

The committee ultimately agreed that a tiered system of replenishment priority was probably best, which could take into account PHAs that had different need levels. Members felt that simpler was better, and a suggestion was made to make the replenishment system fair and simple, with some priority given to PHAs which needed the reserves to meet their baseline, and leave the details (and accounting for all possible permutations and/or scenarios) to HUD.

INFLATION FACTORS

The committee turned to a discussion of methods for inflating costs from year to year, whether to use an AAF, ACPU, or another method. The committee addressed three issues:

- a) there is no compelling reason to believe anything better than AAF exists at this time;
- b) PHAs should continue to work collaboratively with HUD to collect data and develop better predictive factors;
- c) there is a need for an appeals process to increase allocation if the inflation factor is insufficient to meet PHAs' baseline costs.

The Andersen team summarized their analysis which explained that other methods of projecting increased costs (inflation factors) were less accurate and forced more PHAs to rely on reserve funds to meet their baseline. They emphasized the lack of data, and noted that HUDCAPS simply doesn't have enough PHAs with complete data to run a better or more accurate analysis. The Andersen team encouraged the committee to continue submitting/collecting information, analyzing possible alternatives to AAF, and refining a more accurate method of projecting future costs. The committee agreed with the recommendations, and felt that putting together a method to increase budget authority, or a one-time supplement to the budget authority, to account for cost increases NOT covered by the AAF, was the best method. It was agreed that:

- a) HUD and PHAs working collaboratively needed to develop an adjustment factor that more accurately tracks actual change in costs;
- b) HUD also needs a one-time process for providing additional funds when the adjustment factor is insufficient and the PHA knows it (e.g. plant closing);
- c) relying on PHAs' reserves may best accommodate other unanticipated increases.

Committee members were concerned that depending on reserves to cover HUD's inability to correctly predict cost increases was a bad precedent. They made the point that covering the baseline amounts for all PHAs should be a part of the main appropriation, and not part of the "extra" reserve amounts which Congress could recapture at any time, leaving the program less than fully funded.

Several members felt that improvements in data capture and collection at the FMC, and the timeliness of knowing ACPU figures from one year to another, might improve the accuracy of cost projections. Bernice Unland from the FMC indicated that they couldn't know if substantial improvements would be realized, but that it was their goal in designing new systems to meet both the needs of PHAs as well as of HUD staff.

SEE FINAL DRAFT RECOMMENDATION ON INFLATION ADJUSTMENT FACTORS - attached

ADMINISTRATIVE SYSTEMS

After a short break, Robert Dalzell picked up the concept of systems development and made a few comments on technological improvements that HUD was undertaking (or hoping to undertake). He reinforced that these undertakings were an interactive process, and he was hoping to get input and feedback from PHAs and this committee specifically to conceive of and refine technological improvements that would support S.8.

On the technological horizon, he specifically referred to:

- ? a mainframe module that calculates renewals by 1/1/2000;
- ? building a computer “bridge” to the Real Estate Assessment system, and integrating it with HUD’s main system, so PHAs/HUD can have instant population numbers from HUDCAPS (rather than handling them manually);
- ? HUD’s need to automate the recapture process (part of the year-end statement processing); this could potentially lead to the ability to do recaptures on a quarterly basis, although that is not certain. Possibly as early as January 2001;
- ? HUDCAPS ability to allow for internal trading of budget authority between PHAs – this is just an idea at this stage, and may not be required by the recommendations of this committee. No sooner than 2002, if at all;
- ? the FMC has proposed a “read-only” capability for PHAs to view their own HUDCAPS data, although it’s not approved or on the schedule;
- ? the FMC is considering a way of sending confirmation to each PHA indicating how much their renewal is and exactly how it was calculated (hard copy, not electronic);
- ? a more formal link between MTCS and HUDCAPS, and encouraging better and more complete MTCS reporting by each PHA.

A few committee members suggested a better “footnoting” system or explanation accompanying the year-end statements that are evaluated and often corrected by the FMC and then sent back to the PHA. Another committee member suggested a breakdown in MTCS reporting, for instance smaller regions than is encompassed by a PHAs “code”, or user-defined fields that help the PHA sort and isolate information when they examine it themselves. Other data collection shortcomings that committee members mentioned include income exclusion, social security information, and characteristics of waiting lists. A committee member pointed out that when new census data comes on line in 2002, it probably will dramatically affect the costs for a PHA (as it did in 1992), so the new renewal system should be in place before that.

PROPOSED SCHEDULE AND ONGOING COLLABORATION

After lunch, facilitator Larry Susskind reviewed the proposed schedule for the Committee’s development of a final recommendation:

July 20 - Finish discussion of items on agenda

July 27 - CBI mails draft final recommendations to committee

August 6 - responses to draft recommendations collected
August 11 - Draft Regulatory Language mailed by HUD
August 17 - CBI collects comments on Regulatory Language
August 19-20 Working Group Meeting (2-day) to edit Regulatory Language
August 27 - HUD mails Draft Rule

Sept. 9 - Committee members respond to HUD/CBI with their constituents' comments
September 17 - One-day final meeting of the committee to review Rule

October 21 - HUD publishes rule

A Committee member asked whether all issues that the Committee has discussed will be included in the rule. The facilitator responded that not all issues (e.g. administrative or implementation related) will be included in the rule. CBI will draft a summary memo from the Committee to HUD that identifies areas for further work and makes suggestions on how to proceed.

The facilitator responded to a question regarding publishing the committee's work by indicating that CBI is planning to submit a report which will include: a summary of the issues raised in the convening report; the process the Committee followed; the draft recommendations; and the draft rule submitted to HUD. This document would be circulated in draft form to Committee members, and then finalized.

In response to a suggestion that the Committee recommend some specific mechanisms for ongoing consultation between HUD and stakeholders, Gloria Cousar indicated that ongoing consultation would be helpful to HUD. She noted that the Committee's statutory life will end with the publication of the rule, but that HUD is planning to continue consulting with industry and other stakeholders both formally and informally.

Several committee members asked how substantial a commitment HUD would make to follow through on the final recommendations, and if the language of the recommendations could be stronger to indicate the importance of certain elements of the draft. The facilitators explained that this was a first draft of a report to HUD, and the committee would have two opportunities to review the actual proposed rule language and then determine how serious a commitment HUD was making as evidenced by their suggested rule.

REALLOCATION OF UNUSED BASELINE AUTHORITY

The committee was handed a draft outlining a potential system for distributing units/budget authority from a PHA which is consistently underleased to a PHA which has demonstrated both high performance and need.

A committee member commented that reallocating units may be beyond the scope of this Reg-Neg. Another believed that the “punishment” component of permanently removing baseline authority was too harsh, and would not give a PHA an opportunity to examine or explain *why* it has been chronically underleased and time to remedy the underleasing. A question was raised about whether the ACC is a formal contract that could not be broken by HUD deciding to re-allocate baseline units. A HUD staff member responded, however, that if a PHA was not utilizing the resources allocated to it, and there were no realistic expectations that the authority would be used, the PHA had breached the contract.

Several comments focused on the need to separate sanctioning of an under-performing PHA with the recognition that a PHA may have little or no need for all of its authority, and, therefore, units should be re-allocated. Another suggested that allowing PHAs to voluntarily give up their unused units/budget authority is a better method for creating a “pool” for unit re-allocation than to have HUD permanently reallocate the units. Another variation was to “loan” units voluntarily, rather than giving them up permanently. Gloria responded that a loan system would be fraught with disputes, and HUD is not willing to “mediate” disputes among PHAs who have informal or formal “loan agreements”. She went on to reiterate the importance of including a method for allocating units to areas where it could be used, otherwise the “swept” money is a sitting duck, waiting for Congress to send it to supplement the Defense Dept., International Crises, etc.

A committee member reminded everyone that historically, most unit allocations were the result of political deals and respected studies have shown that there is a severe geographic misallocation of units throughout the country. This was followed by a suggestion to develop a simple, small-scale “competitive” method to re-allocate units/dollars among agencies in a specific area. Another suggested that the underleasing PHA could temporarily give up their units/authority, but not have it permanently taken away.

Gloria responded that the underleasing agency could be required to “outsource” their program to a different organization, possibly a tenant’s organization or other private group, for 6 months in an effort to achieve a new procurement. After 6 months, HUD would have an opportunity to re-evaluate the lease rate of the PHA and put them on notice that their units are in jeopardy of being permanently re-allocated. Another member suggested that in addition, some of the “swept up” authority could be used to augment high performers’ reserve funds to greater than a 2-month level.

An additional suggestion was to encourage PHAs to “donate” any budget authority back to HUD in any fiscal year that the PHA knew it would not have the opportunity to use. That would help keep reserve funds flush for other PHAs and give the underleased PHA the opportunity to raise its CMAP score and give itself a year to get its lease rate up.

A question was posed to HUD whether there were other restrictions on the use of PHA reserves, for instance to fund FSS programs or support deconcentration measures. A final question addressed whether using forfeited FSS dollars, which currently go from an escrow account to program receipts, could go back to the PHA for use in that (or other) programs as a “reward”. Some construed that as posing a conflict of interest since a PHA may have incentive then to “fail” families in the FSS program to get their money.

As the afternoon came to a close, it was decided to form a Working Group to discuss the details of rewards and reallocations.

Attachment 1
HUD HOUSING CERTIFICATE FUND
JULY 19-20 COMMITTEE MEETING
FINAL DRAFT RECOMMENDATION ON RESERVES

Non-troubled PHAs will be authorized to use their reserves to respond to valid program expenses that exceed AAF increases, while keeping the cost of the S.8 program within the Congressional appropriation. The committee supports maintaining a two-month reserve for each PHA, which has proven both necessary and sufficient so far to date:

- ? PHAs should be able to use their reserves to respond to changes in rents, tenant incomes, deconcentration, or other valid program-related factors;
- ? HUD should develop a method to re-allocate unutilized budget authority (which exceeds the amount of two months' reserve) from PHAs that have such authority at the end of each PHA's fiscal year;
- ? HUD should "recycle" unutilized budget authority to replenish the reserve of PHAs with reserve levels below the two-month level at the start of the next fiscal year;
- ? To a limited extent, PHAs can choose to assist additional families, beyond the PHA baseline unit allocation, provided such costs are within their current budget authority. If such costs exceed a PHA's budget authority in the following fiscal year, the PHA is responsible for covering such costs through the use of (not more than 50% of its) reserves within a 6-month period; and/or through attrition, such that cost overages are eliminated by the end of the following fiscal year.
- ? High-performing PHAs will have their plans accepted automatically. PHAs using these reserves will not be able to reissue units beyond their baseline allocation in the second year, EXCEPT if they're allocated new increments. HUD will replenish reserves used for this purpose as long as PHAs follow their submitted plan;
- ? PHAs that choose to lease additional units beyond their baseline unit allocation, and expect to temporarily exceed their budget authority (by no more than 5%) may draw on their reserves in that fiscal year if they a) submit a plan acceptable to HUD; b) agree to attrit within the year and; c) accept responsibility for replenishing their own reserves.

Non-troubled PHAs may access up to 50% of their reserves by submitting a budget or a budget revision to HUD. PHAs designated as troubled cannot access their reserve funds unless their request is reviewed and approved by HUD.

If a PHA desires additional reserve dollars beyond the 50% threshold, the PHA must work with HUD Field Office staff to determine why the PHA's costs have deviated from projections and explore possible alternatives (such as management efficiencies) to address rising costs.

If HUD appropriations are insufficient to replenish fully all reserves for all PHAs, HUD will replenish reserves according to a fair and simple method that takes into account current reserve level and PHA need.

Attachment 2
HUD HOUSING CERTIFICATE FUND
JULY 19-20 COMMITTEE MEETING
FINAL DRAFT RECOMMENDATION ON INFLATION ADJUSTMENT FACTORS

Congress has mandated that inflation adjustment factors, based on local or regional trends, be applied annually to baseline allocations. The objective is to ensure that each year's allocations reflect changes in PHAs' actual costs. It is very difficult to forecast these changes accurately. Reserves can be used, in part, to deal with unexpected cost changes. However, HUD's annual budget request should also include, to the greatest extent possible, adequate funds to reflect realistic forecasts of inflation. HUD should continue to develop the most accurate AAFs possible.

After reviewing and comparing numerous predictive factors with actual costs, the committee concludes that for the next three years, HUD should use an adjustment factor based on the change in ACPU the two previous years inflated by the AAF. More accurate inflation factors should be used to improve the budgeting process as soon as they are available.

During this period HUD should work collaboratively with representatives of PHAs and other stakeholder groups to examine procedures 1) to reduce from 2 years to 1 year the lag time in generating Actual Cost data and 2) to test additional approaches for developing more accurate methods of predicting actual cost changes.

The committee recommends that HUD and PHAs work together to implement a formal appeals process so that PHAs have an opportunity to address anomalies where, for whatever reasons, the AAF turns out not to reflect changes in local conditions. The committee recommends a reconciliation and timetable procedure for Adjustment Factors similar to the one the committee has proposed for baseline reconciliation.

HUD HOUSING CERTIFICATE FUND
NEGOTIATED RULEMAKING ADVISORY COMMITTEE
JULY 19-20, 1999 MEETING
LIST OF ATTENDEES

COMMITTEE MEMBERS, ALTERNATES

Gloria Cousar (HUD)
Steve Renahan
Gary Leblanc
Cheryl Wegner
Barbara Sard
Glen Redding
Paul Dettman
Robert Cohen
Betty Bjork
Roy Ziegler
John Pettis
Booker Jones
Gary Coates
Wanda Montgomery
Patti Lane-Lesniak
Nancy Lynchild
Greg Kern
Virgil Tinklenberg
Ms. Helen Lang
Marlene Kwitowski
Ophelia Basgal
Joe Wheeler

HUD STAFF, FACILITATORS, OTHERS

Janet Barry (NYC PHA)

Jerry Benoit (HUD)
Deborah Hernandez (HUD)
Bill Gilliland (HUD)
Sau Lai Chung (HUD)
Mary Conway (HUD)
Robert Dalzell (HUD)
Bernice Unland (HUD)

Joe Riley (OMB)

Larry Susskind (CBI)
David Fairman (CBI)
Michael Lewis (CBI)
Tom Fee (CBI)
Kelly Davenport (CBI)

Shawn Pride (Andersen)
Allie Arrien (Andersen)
Amanda Dougherty (Andersen)
Cassandra Holley (Andersen)